

# Court of Appeals, State of Michigan

## ORDER

Kraig Cole v Gabriel Cole

Docket No. 307165

LC No. 09-033643-DM

Karen M. Fort Hood  
Presiding Judge

Kirsten Frank Kelly

Cynthia Diane Stephens  
Judges

The Court orders that the motion for immediate consideration is GRANTED.

The motion for reconsideration of this Court's denial of the application for leave and denial of the motion for peremptory reversal is GRANTED.

In lieu of granting leave to appeal, the motion for peremptory reversal is GRANTED, and the order entered by the Lenawee County Circuit Court on November 7, 2011, which denied defendant's motion to vacate the April 28, 2011 ex parte order, is REVERSED. "An evidentiary hearing is mandated before custody can be modified, even on a temporary basis. MCR 3.210(C). A trial court shall not modify or amend its previous judgments or orders or issue a new order unless there is clear and convincing evidence that it is in the best interests of the child. MCL 722.27(1)(c). These findings are properly made at an evidentiary hearing held for that purpose." *Grew v Knox*, 265 Mich App 333, 336; 694 NW2d 772 (2005) (case citations omitted). Furthermore, when a trial court is altering a prior custody order, specific findings of fact regarding each of the twelve factors are to be taken into account in determining the best interests of the children. *Id.* at 337, citing MCL 722.23 and 722.27. It is clear from reviewing the transcripts of the evidentiary hearings on December 6, 2011 and December 16, 2011, that the trial court did not conduct a proper evidentiary hearing, nor has it made the necessary findings of fact for changing custody. Because the trial court failed to do so, the trial court erred in entering the November 7, 2011, order. This matter is REMANDED for further proceedings upon the filing of an appropriate motion for change of custody.


The Court retains no further jurisdiction.



A true copy entered and certified by Larry S. Royster, Chief Clerk, on

JAN 04 2012

Date

  
Chief Clerk